

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF FOREST HILLS DEVELOPERS	)	
SEWAGE TREATMENT PLANT FOR AN	)	
ADJUSTMENT OF RATES PURSUANT TO THE	)	CASE NO. 94-264
ALTERNATIVE RATE FILING PROCEDURE FOR	)	
SMALL UTILITIES	)	

O R D E R

Forest Hills Developers, Inc. ("Forest Hills") has served requests to produce certain documents and to respond to interrogatories upon the Commission. The Commission will consider these requests as a motion. Finding that it constitutes an improper intrusion into this Commission's deliberative process and an attempt to probe the Commission's mental processes, the Commission denies the motion.

Forest Hills' request is most unusual. The Commission is not a party to this proceeding nor is Commission Staff presenting testimony or evidence. The Commission's role is to determine, after considering all evidence of record, the appropriate rates for the service which Forest Hills provides. In this vein, the Commission's position is more akin to a judge than a party.

In United States v. Morgan, 313 U.S. 409 (1941), a litigant challenging an administrative action of the Secretary of Agriculture sought discovery of his deliberative process. Reversing a lower court decision permitting such discovery, the Supreme Court ruled:

[T]he short of the business is that the Secretary should never have been subject to this examination. The proceeding before the Secretary has the "quality resembling that of a judicial proceeding." Such an examination of a judge would be destructive of judicial responsibility. . . . Just as a judge cannot be subject to such a scrutiny, so the integrity of the administrative process must be equally respected.

Morgan, at 422 (citations omitted). This prohibition against discovery of an administrative agency's decision-making process has been consistently affirmed. See, e.g., Montrose Chemical Corporation of California v. Train, 491 F.2d 63 (D.C. Cir. 1974).

Accordingly, the Commission finds that Forest Hills' motion to produce certain documents and to answer interrogatories should be denied.

IT IS THEREFORE ORDERED that Forest Hills' motion to produce certain documents and respond to interrogatories is denied.

Done at Frankfort, Kentucky, this 11th day of October, 1994.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director